

Exhibit 1A

OPERATING AGREEMENT
for
THE DETROIT INSTITUTE OF ARTS

Between

THE CITY OF DETROIT

and

**FOUNDERS SOCIETY
DETROIT INSTITUTE OF ARTS**

City Contract No. 77009

OPERATING AGREEMENT
for
THE DETROIT INSTITUTE OF ARTS

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**OPERATING AGREEMENT
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THIS AGREEMENT, made on the 12th day of December 1997 and effective as of the effective date, which is defined below, is between the City of Detroit ("City"), a municipal corporation organized and existing under the laws of the State of Michigan, acting by and through its Arts Commission ("Commission"), and Founders Society Detroit Institute of Arts ("Society"), a private nonprofit corporation organized and existing under the laws of the State of Michigan.

RECITALS:

1. The Detroit Institute of Arts ("D/A") is a unique cultural institution owned by the *City* and located therein. The *D/A* has a long and rich history. The *City* and the *Society* desire to continue to expand the tradition of excellence that exists at the *D/A*.
2. The *D/A* ranks among the leading museums in the world today because of its extensive art collections and community educational programs. The *D/A*, having a building of 600,000 square feet, is the fifth largest art museum in the United States. Each year the *D/A* hosts special exhibitions, as well as numerous community, educational and corporate events.
3. For many years, the *Commission* has contracted with the *Society* to provide services for the operation of the *D/A*. The *Society* also has provided substantial financial support and volunteer services to the *D/A*.
4. The historical contracting arrangement, however, has resulted in, among other things, dual sets of employees and personnel procedures, as well as dual administrative systems and procedures, including financial, accounting and purchasing procedures, and dual auditors.
5. The *City* desires to retain the professional services of the *Society* to provide a uniform system of management of, and fundraising for, the *D/A* so as to continue to promote and maintain the excellence of the *D/A*. The *City* shall continue to own the *City art collection*, including works of art acquired prior or subsequent to the *effective date*, as well as the *D/A*'s building ("D/A building"), located at 5200 Woodward Avenue, Detroit, Michigan 48202, and other *D/A* properties described below.
6. The parties believe that this *agreement* for the operation of the *D/A* by the *Society* will produce (a) cost efficiencies for the *City*; (b) improved business

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efficiencies and overall effectiveness of *DIA* operations; (c) improved employee morale and long-term career development opportunities for employees; (d) increased gifts of works of art to the *DIA* and increased contributions to the *Society's* endowment funds held on behalf of the *DIA*; (e) increased opportunity to secure federal, state, regional, county, *City* and other financial support; (f) an ability to respond more quickly to changing conditions, circumstances and priorities; (g) continuation and possible future expansion of the *DIA*'s hours and number of open galleries; and (h) an ability to host additional special exhibitions, all of which are expected to contribute to the long-term viability and stability of the *DIA* as a first-class fine arts museum.

7. The *City* and the *Society* are parties to two existing contracts, one with a term commencing on July 1, 1994 (the "1994 contract") and a Deaccession Form Contract dated as of November 1, 1992 (together with the 1994 contract, the "contracts"). This *agreement* between the *City* and the *Society* will supplant the *contracts* between the *City* and the *Society*, and the *Society* fully agrees to the abrogation of its *contracts* with the *City*, as set forth in Exhibit 1 hereto.
8. The Corporation Counsel of the *City* has rendered an opinion to the effect that the applicable law does not prevent the transaction embodied herein.
9. Among the purposes for which the *Society* was founded are (a) assisting the *Commission* in the operation of the *DIA*, performing such services as may be requested by the *Commission*, (b) promoting the public's interest in and knowledge of art matters by classes, lectures, exhibits and such other methods as may be thought to be appropriate to that end, and (c) soliciting, receiving and administering money, works of art and other property.
10. The *Society* is firmly committed to the goal of diversity in all ranks of its work-force.
11. Section 7-301 of the *City Charter* establishes an Arts Department, headed by the *Commission*, which consists of seven (7) members. Section 7-301 provides in part that "the arts department shall maintain and operate the Detroit Institute of Arts." The parties acknowledge the important role played by the *Commission* in overseeing the *DIA* and agree that its oversight role is not diminished by the terms of this *agreement*.

NOW THEREFORE, the *City* and the *Society* agree as follows:

A. DEFINITIONS

The following terms have the meanings specified:

1. **AAA** means the American Arbitration Association.
2. **Agreement** means this *agreement*, as originally executed or as amended, between the *City* and the *Society*.
3. **Associates** means the respective agents, officers, directors, employees, volunteers and contractors of, as well as other entities or persons associated with, affiliated with or subsidiary to, each party, now existing or hereafter created.
4. **City** means the City of Detroit, Michigan.
5. **City art collection** means the collection of works of art owned by the *City*, which currently includes the items listed in Exhibit 2 hereto and existing items owned by the *City* which may not be reflected on the inventory listing at Exhibit 2, the *DIA*'s library, and subject to the terms of this *agreement* and the terms of any gift or bequest, works of art acquired during the *contract term*, whether by (a) gift directly to the *DIA* and/or the *City* or to any third person or entity for the benefit of the *DIA*; (b) purchase; or (c) otherwise. The *City art collection* will not, however, include any work of art disposed of in accordance with this *agreement* and the *DIA*'s Collections Management Policy, lost, or destroyed. This definition is not intended to limit or diminish the *Society*'s obligations under this *agreement*. The *City* makes no representation as to the completeness of Exhibit 2.
6. **City Charter** means the 1997 Charter of the *City* or the successor thereto.
7. **City Council** means the Detroit City Council or the successor thereto.
8. **City garage and lots** means (a) the parking garage on the South side of the *DIA building* (also known as the "Cultural Center garage"); (b) the parking lot located on Frederick Street, between John R and Brush Streets as described on Exhibit 3 hereto (together with any additional structure developed or constructed thereon, "Frederick lot"), and (c) the parking lot located on John R, which is used for employee parking ("employee parking lot").
9. **City intellectual property** means copyrights, trademarks, service marks, trade names, patents, mask works, and the like relating to the *City art collection* or

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the operations of the *DIA*, presently existing or arising from or in the course of performance of this *agreement*, other than the *Society intellectual property*.

10. **Claim** means any action, liability, obligation, damage, penalty, cost, charge, demand, lawsuit, unfair labor practice charge, complaint, loss or expense (including fees and expenses for attorneys, expert witnesses and other consultants).
11. **Commission** means the Arts Commission of the *City* established by Section 7-301 of the *City Charter*.
12. **Contract term** means the initial term of this *agreement* and any extensions thereof in accordance with Subsection L2, *infra*.
13. **DIA** means the Detroit Institute of Arts.
14. **DIA building** means the museum building and grounds located at 5200 Woodward Avenue, Detroit, Michigan 48202, which are listed and described in Exhibit 3 hereto.
15. **DIA records** means the books, files, records, ledgers and other documents (whether on paper, computer, computer disk, tape or other storage media) presently existing and relating to the operations of the *DIA* or arising from the performance of this *agreement*.
16. **DIA properties** means the *DIA building* and the *City garage and lots*, which are listed and described in Exhibit 3 hereto.
17. **Effective date** means February 1, 1998, which is the date on which this *agreement* incepts.
18. **Ferry Street properties** means the properties owned by the *Society*, which are listed and described in Exhibit 4 hereto.
19. **Force majeure event** means prevention by governmental regulation or order other than a governmental regulation or an order issued by the *City*, wars, riots, sabotage, insurrection, terrorism, acts of God, fires, storms, natural disasters, strikes, work stoppages, power failures or other event or occurrence that (a) is beyond the control of the party claiming the *force majeure event* and (b) substantially impairs its ability to perform one or more of its obligations under this *agreement*.

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20. ***Frederick lot ground lease*** means the Ground Lease executed by the *City* and the *Society* effective upon delivery of the specified premises to the *Society* and approved by the *City Council* by resolution dated March 14, 1997.
21. ***Society*** means Founders Society Detroit Institute of Arts.
22. ***Society art collection*** means the art collection owned by the *Society*, including the items listed on Exhibit 5 hereto and existing items owned by the *Society* which may not be reflected on the inventory listing at Exhibit 5, as well as items acquired by the *Society* during the *contract term*, but excluding items that have been disposed of, lost or destroyed. The *Society* makes no representation as to the completeness of Exhibit 5.
23. ***Society intellectual property*** means (a) trademarks, trade names, and service marks, whether presently existing or hereafter created, incorporating the name, assumed names, abbreviations or symbols of the *Society*, and (b) copyrights relating to publications, brochures, compilations or catalogues of works of art, which were obtained or applied for prior to the *effective date*.
24. ***Society properties*** means the *Society art collection*, the parking lot on Kirby (which is near the corner of John R), in which parking lot the *Society* has a 2/3 ownership interest, the *Ferry Street properties* and the *Society's* endowment funds established for the benefit of the *DIA*, together with any assets now owned or hereafter acquired by the *Society*. The *Society properties*, however, will not include any such properties or assets disposed of, lost or destroyed.

B. SOCIETY'S REPRESENTATIONS AND WARRANTIES

1. **Society's Authority.** The *Society* represents and warrants that it is a nonprofit corporation described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and that it has the power and authority to execute and deliver this *agreement* and to perform its obligations hereunder, and the execution, delivery and performance of this *agreement* have been or will be duly authorized by all necessary action, including the approvals and ratification by the *Society's* governing members prior to the *effective date* as contemplated by Subsection 11, *infra*. The opinion of the *Society's* legal counsel that this *agreement* shall be valid and binding on the *Society* is attached as Exhibit 6 hereto.
2. **Society Has No Conflicting Contractual Obligations.** The *Society* represents and warrants that, as of the execution date and the *effective date* of this *agreement*, it is not party to any agreement or understanding which would

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prevent, limit or hinder in any material manner its performance of any obligations under this *agreement*.

3. **Society Has No Conflict of Interest.** The *Society* represents and warrants that, as of the execution date and the *effective date* of this *agreement*, it has no interest, and that, during the *contract term*, it shall not acquire any interest, which would conflict in any manner or degree with the performance of its obligations under this *agreement*. The *Society* further covenants that it shall employ no person or entity having such an interest unless full disclosure of the conflict has been made to the *Commission* and the *Commission* has approved in advance the proposed transaction. The *Society* represents and warrants that, throughout the *contract term*, it will comply with the *DIA's Guidelines for Professional Practices* (a copy of the most current version of which as of the execution date of this *agreement* has been provided to the *City*), as they may be modified from time to time. The *Commission* shall submit to the *City Clerk* a copy of the most current version of the *DIA's Guidelines for Professional Practices* as of the execution date of this *agreement* and any subsequent amendments thereto.
4. **Society Has No Conflict with Law.** The *Society* represents and warrants that neither the execution, delivery and performance of this *agreement* nor the consummation by the *Society* of the transactions contemplated herein (a) will conflict with, violate or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction, decree, determination or award of any court, governmental department, municipality, board, agency, instrumentality or arbitrator or (b) require any consent, authorization or approval of any person or entity not a party hereto; provided that, in the case of each of clause (a) and clause (b), the approvals and ratification of the *Society's* governing members will be required as contemplated by Subsection I1, *infra*.

C. CITY'S REPRESENTATIONS AND WARRANTIES

1. **City's Authority.** The *City* represents and warrants that it has the power and authority to execute and deliver this *agreement* and to perform its obligations hereunder, and the execution, delivery and performance of this *agreement* have been duly authorized by all necessary action, including the approval of this *agreement* by the *City Council*, which approval has been obtained on or prior to the execution date of this *agreement*. The opinion of the Corporation Counsel of the *City* that this *agreement* shall be valid and binding on the *City* is attached as Exhibit 7 hereto.
2. **City Has No Conflicting Contractual Obligations.** The *City* represents and warrants that, as of the execution date and the *effective date* of this

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agreement, it is not party to any agreement or understanding which would prevent, limit or hinder in any material manner its performance of any obligations under this *agreement*.

3. **City Has No Conflict of Interest.** The *City* represents and warrants that, as of the execution date and the *effective date of this agreement*, it has no interest, and that, during the contract term, it shall not acquire any interest, which would conflict in any manner or degree with the performance of its obligations under this *agreement*.
4. **City Has No Conflict with Law.** The *City* represents and warrants that neither the execution, delivery and performance of this *agreement* nor the consummation by the *City* of the transactions contemplated herein (a) will conflict with, violate or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction, decree, determination or award of any court, governmental department, municipality, board, agency, instrumentality or arbitrator or (b) require any consent, authorization or approval of any person or entity other than the approval of *City Council*, which approval has been given on or prior to the execution date of this *agreement*.

D. ENGAGEMENT OF THE SOCIETY; RELATIONSHIP BETWEEN THE PARTIES

1. **Engagement.** In the exercise of the *Commission's* authority granted by *City Charter* § 7-301, and pursuant to its oversight function as delineated in this *agreement*, the *City* hereby engages the *Society* as manager and operator of the *DIA*, and the *Society* hereby agrees to faithfully and diligently manage and operate the *DIA* in accordance with the terms and conditions of this *agreement*, without any duty by the *City* of compensation of the *Society* for such services.
2. **Independent Contractor Relationship.** The *Society* is an independent contractor and as such shall have full authority and responsibility to discharge the duties imposed upon it hereunder without restrictions other than those imposed by or pursuant to this *agreement*. Neither the *Society* nor the *City* shall have the right or authority to bind the other party, without the express written authorization of such other party, to any obligation to a third party. Nothing contained in this *agreement* shall constitute the parties as partners or joint venturers for any purpose, it being the express intention of the parties that no such partnership or joint venture exist and that each party has only those duties to the other that are specified in this *agreement*.

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3. **Scope of the Society's Duties.** The *Society's* duties include all aspects of the operations of the *DIA*, including day-to-day operations; management of art collections; presentation of exhibitions and other events; maintenance of the *DIA building*, the *Frederick lot* (consistent with the terms of the *Frederick lot ground lease*) and the *employee parking lot*; collection and expenditure of income; fundraising; marketing; acquisition/disposition of works of art; food service (including obtaining and maintaining any necessary liquor licenses); and all other financial operations. The *Society* is responsible for managing the *City art collection*, the *DIA building*, the *Frederick lot*, and the *employee parking lot* subject to the terms and conditions of this agreement.
4. **Final Accounting Under 1994 Contract.** The parties shall account to each other for all amounts due, through and including the *effective date*, under the *1994 contract* between them referred to in Recital 7, *supra*, which will be abrogated as of the *effective date* as evidenced by Exhibit 1 hereto.

E. RETENTION OF ASSETS BY THE CITY

1. **City Retains Title to Assets.** The *City* shall retain title to and ownership of the (a) *City art collection* and (b) the *DIA properties* (including fixtures).
2. **Acquisition of New Assets.** Subject to the terms of any gift or bequest, as between the *City* and the *Society*, the *City* shall also have title to all works of art acquired, whether by gift directly to the *DIA* and/or the *City* or to the *Society* or any other person or entity for the benefit of the *DIA*, purchase or otherwise, during the *contract term*. In cases in which an acquisition of art is made by the *Society*, whether by purchase or gift, the *Society* shall ensure that its right, title and interest, if any, to any such work is promptly transferred to the *City*. As between the *City* and the *Society*, title to works of art may be retained by the *Society* if and only if so specified by the terms of the gift or bequest or if approved by the *Commission*. To the extent that the *Society* acquires any right, title or interest in a work of art, the *Society* shall request that the interest being acquired include all copyright interests in the work, including a waiver of the artist's rights under the Visual Artists Rights Act of 1990, 17 U.S.C. § 106A.
3. **Licensing of Intellectual Property.**
 - (a) The *Society* shall have the right to use, license, sublicense and exploit the *City intellectual property*, in accordance with the licensing agreement between the *City* and the *Society* executed on the date hereof and effective on the *effective date*, in the form attached as Exhibit 8 hereto. All revenues derived from the *Society's* use or exploitation of the *City*

intellectual property shall be used for the benefit of the *DIA*. As between the *City* and the *Society*, all *City intellectual property* relating to the *City art collection* or the operations of the *DIA* is owned by and shall be titled in the name of the *City*. Except for *Society intellectual property*, as defined in Subsection A23(a), any intellectual property rights, works, inventions or discoveries that relate to or arise from or in the course of performance of this *agreement* shall be owned by the *City*, and the *Society* agrees that it shall assign to the *City* any ownership interests in any such intellectual property.

- (b) The *Society's* employment policies and procedures shall specify that any intellectual property rights, works, inventions or discoveries by *Society* employees during and as a part of their *Society* employment that relate to or arise from or in the course of performance of this *agreement* shall be assigned to the *Society* or the *City* as the *City* may direct. The *Society* shall have the right to make exceptions to such policies and procedures if in the best interests of the *DIA* and consistent with state-of-the-art practices of leading fine arts museums. Further, the *Society* shall take reasonable steps to protect any such intellectual property rights at its own expense.

F. AGREEMENTS BY THE SOCIETY

1. Compliance with Laws; Standards.

- (a) During the *contract term*, the *Society* shall manage, preserve, maintain and seek to improve through new acquisitions the *City art collection*, and the *Society* shall develop and present exhibitions and education programs to benefit the community, including programs that attempt to stimulate interest in art and participation in *DIA* activities by all sectors of the greater Detroit community.
- (b) In conducting its activities pursuant to this *agreement*, the *Society* shall comply with all applicable federal, state and local laws and regulations, and the *Society* shall perform its duties in accordance with the standard of care required by state-of-the-art practices employed by leading fine arts museums (except insofar as limited by (1) features of the *DIA building* which cannot be modified without incurring unreasonable expense or (2) the unavailability of sufficient funding respecting the *DIA building* despite the *Society's* best efforts to raise such funding).

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(c) Consistent with the objective of promoting the excellence of the *DIA* and its facilities, the *Society* covenants that it shall not undertake to manage or operate any museum or art institution other than the *DIA*.

2. Society's Duty to Manage the City Art Collection.

(a) The *Society* shall be responsible for managing the *City art collection* in accordance with the *DIA's Collections Management Policy* as in effect as of the execution date of this *agreement* and as modified from time to time hereafter in accordance with this *agreement*. Such policy shall be consistent with state-of-the-art practices that are generally recognized, accepted and followed by leading fine arts museums. The *DIA's Collections Management Policy* in effect as of the execution date of this *agreement* has been approved by the *Commission*, and the *Society* shall submit any proposed modification to the *Commission* for its approval of same. The *Society* shall also submit any such proposed modification to the *City Council*, which shall be deemed to have approved of such modification unless the *City Council* adopts a resolution rejecting such proposed modification within forty-five (45) days after receipt of such proposal.

(b) Title to the *City art collection* remains with the *City*; however, the *Society* shall have the right to acquire and dispose of works of art in the *City art collection* in accordance with the *DIA's Collections Management Policy*. Any funds received from disposition of works of art in the *City art collection* shall be used solely to purchase other works of art for the *City art collection*. This Subsection F2 contains the *Society's obligations* with regard to collections management and pursuant to the Abrogation Agreement as set forth in Exhibit 1, as of the *effective date* will supersede the Deaccession Form Contract, dated as of November 1, 1992, between the *City* and the *Society*, the deaccession policies and procedures of which have been incorporated into the *DIA's Collections Management Policy*.

3. **Situs of the Collection; Loans of Works of Art.** The *Society* represents and warrants that during the *contract term* the *DIA building* shall continue to be the primary location for the exhibition of and storage of the *City art collection*. This Subsection F3 shall not limit or diminish the *Society's ability* to loan portions of the *City art collection* in accordance with the *DIA's Collections Management Policy*.

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4. **Society's Duty to Inventory the City Art Collection.** Within two (2) years of the *effective date*, the *Society* shall complete a comprehensive inventory of the *City art collection*. Upon completion of the inventory, the *Society* shall submit a copy of the inventory to the *Commission*. Thereafter, the *Society* shall update said inventory consistent with state-of-the-art practices that are generally employed by leading fine arts museums.
5. **Society's Duty to Maintain the DIA Building and Parking Lots.** From and after the *effective date*, (a) the *Society* shall manage, preserve, maintain and seek to improve the *DIA building* and the *employee parking lot* and shall keep the mechanical systems and equipment therein or associated therewith in good condition and repair for the benefit of the *City*, including the maintenance of and capital improvements to the building systems, electrical systems and HVAC systems, subject to the standards set forth in Subsection F1(b), *supra*, and (b) except as provided in the *Frederick lot ground lease*, the *Society* shall maintain and operate the *Frederick lot* solely as a parking area (1) for the *Society*, visitors, employees, users and invitees of the *DIA* and the *Society*, and (2) also for any other arts and/or cultural institutions owned and/or operated by the *City* or other public or non-profit entities located in the vicinity of said parking lot, and the general public, all in accordance with the provisions of the *Frederick lot ground lease*.
6. **Additions, Improvements and Modifications to the DIA Building and Parking Lots.** The *Society* shall have the right to construct additions, improvements or modifications to any part of the *DIA building* and the *employee parking lot* as the *Society* may deem necessary or desirable for the benefit of the *City*, provided that as to additions, improvements or modifications that will either significantly change the appearance of and/or significantly affect the operations of the *DIA* or cost more than Five Hundred Thousand Dollars (\$500,000), the *Society* shall submit all architectural plans to the *Commission* for its review and approval in advance of the construction of any such project, and the *Society* shall not commence construction until such approval is received. As to all other additions, improvements or modifications, the *Society* shall report to the *Commission* about same. All resulting facilities shall become and remain the property of the *City*. The *Society* shall have the right to construct additions, improvements or modifications to any part of the *Frederick lot* consistent with the terms of the *Frederick lot ground lease*.
7. **Society Has No Right to Encumber.** The *Society* shall not encumber, hypothecate, mortgage, subject to a lien or otherwise cloud the title of (a) the *DIA properties* or any additions thereto as authorized by Subsection F6, *supra*; (b) works in the *City art collection*; or (c) the *City intellectual property*.

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8. **Society's Duty to Pursue Funding.** The *Society* shall have the right and the duty to pursue additional sources of funding for the operations of the *DIA* and *DIA building* improvements, including public sector sources such as federal grants, state assistance, regional taxation, county and *City* grants, and private sector sources such as contributions from individuals, corporations, foundations and trusts, and the *City* agrees to cooperate with the *Society* in connection with the latter's efforts to secure funding.
9. **Use of Revenues.** The *Society* shall be entitled to receive and shall use all revenues derived from the operations of the *DIA*, the *DIA building*, the *Frederick lot* and the *employee parking lot*, including proceeds from ticket sales in connection with the Detroit Film Theater, Wassail, special exhibits or events, and from general admission to the *DIA*, licensing revenues resulting from the exploitation of the *City intellectual property* as set forth in Subsection E3, *supra*, and revenues otherwise received by or on behalf of the *DIA* by gift or otherwise, from whatever source, for the benefit of the *DIA*.
10. **Society's Duty to Provide Operating Expenses.** Except as specifically provided in this *agreement*, the *Society* shall be responsible for all operating expenses of the *DIA* after the *effective date*.
11. **Society's Pre-Effective Date Liabilities.** The *Society* shall remain responsible for all expenses, costs and liabilities incurred by it prior to the *effective date* (other than to the extent that such liabilities arose through the negligence or misconduct of the *City*), and the *Society* shall be solely responsible for all wages and obligations under retirement or other employee benefit plans by reason of employees' *Society* service prior to the *effective date*, and severance and termination costs payable to the *Society's* employees by reason of their service as such or the termination of that status.
12. **Solicitation of Donations of Works of Art; Certain Art Acquisitions.** The *Society* shall use its best efforts to solicit gifts and donations of works of art for the benefit of the *DIA*. The *Society* shall also continue to use its best efforts to increase the *DIA's* collections of works of art by artists of African, African-American, Central-American, South-American, Asian-American and Native-American descent consistent with the *DIA's* Collections Management Policy.
13. **Society's Duty to Establish Disaster Recovery Plan.** The *Society* shall establish and maintain a disaster recovery plan that satisfies the standard of care required by state-of-the-art practices of leading fine arts museums. The *Society* shall submit its disaster recovery plan to the *Commission* for the *Commission's* approval.

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14. **Society's Duty to Establish Risk Management Programs.** The *Society* shall establish and maintain risk management programs, safety programs, and other similar controls consistent with the standard of care required by state-of-the-art practices of leading fine arts museums. The *Society* shall submit its risk management programs, safety programs, and other similar controls to the *Commission* for the *Commission's* approval.
15. **Society's Duty to Place Certain Insurance Policies.** Except as provided in the next sentence, the *Society* shall obtain at its sole expense the insurance coverages listed in this Subsection F15 from insurers rated "A" or better by *A.M. Best's Insurance Reports*, and which are authorized to transact insurance in Michigan, as evidenced by a subsisting certificate of authority issued by the Commissioner of Insurance of Michigan. The *Society* shall not have an obligation, however, to obtain the insurance coverages listed in Subsections F15(a) or F15(b) until from and after the expiration of such policies currently existing and maintained by the *City* as of the execution date of this *agreement*; the *Society* shall have a duty to maintain and administer such policies upon transfer by the *City* to the *Society* of the loss payee status and claims administration function as of the *effective date* as provided in Subsection H7(d), *infra*. The *Society* shall be obligated to reimburse the *City* for any portion of payments made by the *City* to obtain coverage under such existing policies referred to in Subsections F15(a) and (b) with respect to the period from and after the *effective date*. Each insurance policy required by this Subsection F15 shall be accompanied by an endorsement that states that the policy shall not be canceled or reduced without thirty (30) days prior written notice to the *City* and the *Society*. The *Society* has provided to the Risk Management Division Director and the Corporation Counsel of the *City*, and will provide at least once annually during the *contract term*, copies of the certificates of insurance evidencing the insurance and the endorsements required by this Subsection F15.
 - (a) all risks fine arts insurance (subject to standard exclusions) covering the *City art collection* and the *Society art collection* providing as follows, which policy shall name the *City* and the *Society* as named insureds and the *Society* as the sole loss payee:
 - (1) At least One Hundred Fifty Million Dollars (\$150,000,000) blanket loss limit covering the aggregate of all of the *City art collection* and the *Society art collection* when they, in whole or in part, are resident at the *DIA building*, and fine art of others on loan to the *DIA*;

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- (2) At least Ten Million Dollars (\$10,000,000) blanket loss limit covering the aggregate of all of the *City art collection* and the *Society art collection* when they, in whole or in part, are (A) at a location other than the *DIA building*; or (B) in transit;
- (3) At least One Hundred Fifty Million Dollars (\$150,000,000) blanket loss limit covering the aggregate of all of the *City art collection* and the *Society art collection* and fine art of others on loan to the *DIA* for any one loss or disaster, in case of either partial or total loss, or salvage charges, or any other costs or expenses or all combined;
- (4) At least Five Million Dollars (\$5,000,000) for international coverage; and
- (5) Not more than One Thousand Dollar (\$1,000) per occurrence deductible.

(b) conservator's fine arts insurance providing as follows, which coverage may be included in the policy described in Subsection F15(a), *supra*, and which shall name the *City* and the *Society* as named insureds and the *Society* as the sole loss payee:

- (1) At least Two Million Dollars (\$2,000,000) for conservator's fine arts insurance at the *DIA building* and any one loss;
- (2) At least One Million Dollars (\$1,000,000) for conservator's fine arts insurance at locations other than the *DIA building* and in transit via common carrier; and
- (3) At least Two Hundred Fifty Thousand Dollars (\$250,000) for conservator's fine arts insurance in transit in the custody of an employee of the *Society*.

(c) statutory Michigan Workers' Compensation Insurance and employer's liability insurance having at least a Five Hundred Thousand Dollar (\$500,000) per accident limit for bodily injury by accident, at least a Five Hundred Thousand Dollar (\$500,000) total policy limit for bodily injury by disease and at least a Five Hundred Thousand Dollar (\$500,000) per employee limit for bodily injury by disease;

(d) automobile liability insurance for all vehicles owned, non-owned, hired by or used by the *Society*, including Michigan No-Fault Personal Injury

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Protection and Property Protection insurance including liability insurance having at least a One Million Dollar (\$1,000,000) combined single limit. The *Society* shall purchase physical damage insurance on owned vehicles, and the *Society* shall be the sole loss payee thereof;

- (e) commercial general liability insurance, including blanket contractual liability and having at least (i) a One Million Dollar (\$1,000,000) per occurrence limit and (ii) a Two Million Dollar (\$2,000,000) aggregate limit. The commercial general liability insurance policy shall name the *City* and the *Society* as the named insureds and shall contain the following endorsements (to the extent that such coverage is not already included in the language of the insurance policy):
 - (1) During the term of this policy, it is agreed that this policy specifically covers bodily injury and property damage liability assumed by the insured under the provisions of Contract No. 77009, dated December 12, 1997, between the insured and the City of Detroit, based on occurrences after the effective date of such Contract.
 - (2) It is agreed that the inclusion of more than one (1) insured under this policy shall not affect the rights of any insured as respects any claim, suit or judgment made or brought or for any other insured or by or for any employee of any other insured. This policy shall protect each insured in the same manner as though a separate policy had been issued to each, except nothing herein shall operate to increase the insurer's liability beyond the amount or amounts for which the insurer would have been liable had only one (1) insured been named.
- (f) excess umbrella coverage above the coverages included in Subsections F15(c) to F15(e), *supra*, and F16, *infra*, and having at least a Five Million Dollar (\$5,000,000) per occurrence and annual aggregate limit;
- (g) directors and officers liability insurance having at least a Two Million Dollar (\$2,000,000) aggregate limit;
- (h) employee dishonesty insurance having at least a One Hundred Thousand Dollar (\$100,000) per occurrence limit, which policy shall name the *City* and the *Society* as named insureds as respects the *Society*'s employees and the *Society* as the sole loss payee; and

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(i) theft, disappearance, and destruction of money and securities insurance having at least a Five Thousand Dollar (\$5,000) per occurrence limit, which policy shall name the *City* and the *Society* as named insureds and the *Society* as the sole loss payee.

16. **Society's Duty to Place Liquor Liability Insurance.** The *Society* shall obtain at its sole expense from an insurer rated "A" or better by *A.M. Best's Insurance Reports* and which is either authorized to transact insurance in Michigan, as evidenced by a subsisting certificate of authority issued by the Commissioner of Insurance of Michigan, or is an unlicensed insurer qualified to negotiate surplus lines insurance, as determined by the Commissioner of Insurance of Michigan, liquor liability insurance having at least a Three Hundred Thousand Dollar (\$300,000) each accident limit for bodily injury, property damage or loss of support. The insurance policy required by this Subsection F16 shall be accompanied by an endorsement that states that the policy shall not be canceled or reduced without thirty (30) days prior written notice to the *City* and the *Society*. The *Society* has provided to the Risk Management Division Director and the Corporation Counsel of the *City*, and will provide at least once annually during the *contract term*, a copy of the certificate of insurance evidencing the insurance and the endorsement required by this Subsection F16.

17. **Modifications to Terms or Conditions of Insurance Policies Required by Subsections F15 and F16.** Any increases in or improvements to any of the terms or conditions of the insurance policies required by Subsections F15 and F16, *supra*, may be made by the *Society*. Any elimination or reduction of any of the terms or conditions, of the insurance required by Subsections F15 and F16, *supra*, however, may be made by written agreement of the *Society* and the *Commission*.

18. **Society's Duty to Administer Insurance Policies, Handle Insurance Claims and Manage Insurance Proceeds.** The *Society* shall be responsible for administering all insurance policies required by Subsections F15 and F16, *supra*, and handling all claims thereunder. Further, the proceeds of the insurance policies described in Subsections F15(a) and F15(b), *supra*, and the proceeds of the insurance policies described in Subsection H7, *infra*, to the extent related to the *DIA* or the *DIA building*, shall be used solely to remedy the problem resulting in such payment of proceeds (unless otherwise agreed by the *Commission*), including the repair of damaged items and the acquisition of new replacement items for the benefit of the *DIA*. If, however, the proceeds of such insurance policies arising from any occurrence or casualty exceed One Million Dollars (\$1,000,000), the *Society* shall make a recommendation to the *Commission* concerning the use of the proceeds and shall hold such proceeds in an escrow account on behalf of the *City* until directed by the *Commission* as to how such

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proceeds are to be used; provided that in all cases such proceeds shall be used for the sole benefit of the *DIA* and, in the event that any such proceeds arise from any occurrence or casualty involving loss of, damage to or destruction of any work of art, such proceeds shall be used solely to purchase replacement works of art for the *City art collection*.

19. **Society's Duty to Reimburse the City for the Placement of Other Insurance Policies.** The *Society* shall reimburse the *City* for the cost of the premiums of the risk of direct physical loss insurance coverage and boiler insurance coverage, as specified in Subsection H7, *infra*.
20. **Society's Duty to Renegotiate Insurance Coverages.** Every three (3) years during the *contract term*, or at such other times as the *Commission* and the *Society* deem appropriate, the *Society* shall negotiate in good faith with the *Commission* about the requirements for the types and limits of insurance listed in Subsections F15 and F16, *supra*.
21. **Society's Subcontractors to Carry Certain Insurance Coverages.** The *Society* shall require its subcontractors, except for those exempted by law, to maintain (a) employer's liability insurance, (b) worker's compensation insurance which meets State of Michigan statutory requirements, (c) automobile liability insurance and (d) commercial general liability insurance (in the case of this clause (d), except for subcontractors providing personal services).
22. **Society's Waiver of Subrogation.** The *Society* waives its rights of subrogation and recovery for *claims* against the *City* and the *City's associates*, to the extent that the *Society* or its *associates* are insured or required to carry insurance for such *claims*. The *Society* shall cause each of the insurance policies required by Subsections F15 (except for the policy referenced in Subsection F15(g), *supra*) and F16, *supra*, of this *agreement*, to contain a provision whereby the insurer waives any rights of subrogation against the *City* and the *City's associates*. If such provision cannot be obtained, then the policies shall name the *City* as an additional insured, even if not otherwise required by this *agreement*.
23. **Society to Follow Generally Accepted Accounting Principles.** The *Society* shall maintain and retain its books and records in accordance with generally accepted accounting principles.
24. **Compliance with Executive Orders; Construction Contracts.** The *Society* agrees that it will voluntarily comply with (a) City of Detroit Executive Order No. 4, dated October 28, 1994 and (b) Executive Order No. 22, dated August 29, 1983. Copies of Executive Orders 4 and 22 are attached as Exhibits 9 and 10 hereto, respectively. In addition, the *Society* shall ensure that at least 30% of

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aggregate amounts expended by the *Society* under contracts entered into by the *Society* for any additions, improvements or modifications to the *DIA building*, the *Frederick lot* and the *employee parking lot* shall be paid to Detroit-based businesses, or minority business enterprises or women-owned businesses.

25. **Residency Requirement.** The *Society* shall require (a) the *Society's DIA* director; (b) the *Society's DIA* deputy director; and (c) at least sixty-eight percent (68%) of its full-time employees located at the *DIA building* to reside in the *City*. In addition, the *Society* shall require at least one-third of the elected members of its board of directors and at least one-fourth of the members of its board's executive committee (or any other board committee, whatever its title or designation, which exercises the authority or functions of the executive committee as described in Exhibit 13) to be residents of the *City*. The *Society* shall be in default under the obligations contained in the preceding two sentences only if it is not in compliance with the requirements set forth therein, measured quarterly on each September 30, December 31, March 31 and June 30, commencing June 30, 1998. The *Society* shall also use its best efforts to employ individuals residing in the *City* to work at the *Society's DIA* stores located at the Somerset Collection and Twelve Oaks Mall. Residency shall have the meaning ascribed by the *City Charter*, *City* ordinances and the relevant case law. The *Society* shall promulgate from time to time guidelines (the "residency guidelines") setting forth the *Society's* methodology for computation and verification of *City* resident workforce composition, which *residency guidelines* shall be approved by the *Commission*. The *Commission* shall monitor the *Society's* compliance with the residency requirements established by this Subsection F25. The *Society's* failure to strictly enforce this Subsection F25 shall constitute a material breach of this *agreement*, triggering the provisions of Sections L and M, *infra*.
26. **Affirmative Action.** The *Society* shall be committed to affirmative action programs to increase the numbers of minority and women employees in the professional ranks of the *DIA*, including curatorial, educational, art-related and management positions. To this end, the *Society* shall:
 - (a) establish and update as necessary undergraduate, graduate, co-operative, and internship programs that focus on minorities and women, the aim of which is to develop a supply of talent for future employment by the *Society*;
 - (b) establish and update as necessary progressive training programs for current employees that focus on minorities and women, the aim of which

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is to equip those employees to assume positions in the *DIA's* professional and managerial ranks;

- (c) develop, implement and update as necessary employee progression and succession programs that incorporate the affirmative action objectives of Subsection F26;
- (d) implement, within one (1) year of the *effective date*, an affirmative action plan that satisfies the regulations promulgated, and amended from time to time, by the Office of Federal Contract Compliance Programs of the United States Department of Labor. Thereafter, the affirmative action plan shall be updated on an annual basis. A copy of the affirmative action plan, as well as all updates thereto, shall be provided to the *Commission*; and
- (e) incorporate management of workforce diversity as an express responsibility of the *Society's* human resources department.

To assist in the implementation of its affirmative action and other human resources initiatives the *Society* shall hire a full-time Director of Human Resources, whose duties shall include efforts to fulfill the *Society's* affirmative action objectives. The *Society's* failure to satisfy the requirements of this Subsection F26 shall constitute a material breach of this *agreement*, triggering the provisions of Sections L and M, *infra*.

27. **Non-Discrimination Policy.** The *Society* agrees to comply with all federal, state and local laws governing equal employment opportunity. The *Society* agrees that it shall not, and the *Society* shall use its best efforts to ensure that its contractors and subcontractors shall not, discriminate against any employee or applicant for employment with respect to the individual's hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, physical disability not related to job requirements, marital status or sexual orientation. The *Society's* failure to satisfy the requirements of this Subsection F27 shall constitute a material breach of this *agreement*, triggering the provisions of Sections L and M, *infra*.
28. **Non-Discrimination Clauses in Subcontracts.** The *Society* shall notify its contractors and subcontractors that they shall comply with the requirements of Subsection F27, *supra*, of this *agreement*, and the *Society* further agrees that it shall include those provisions in all contracts and subcontracts.

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29. **Employee Selection Procedures.** To the extent that the *Society* employs any tests or other selection procedures as a basis for any employment decision, those tests or selection procedures shall satisfy the requirements of the Uniform Guidelines on Employee Selection Procedures, as amended from time to time, which are promulgated by the Equal Employment Opportunity Commission of the Department of Labor and which are codified at 29 C.F.R. § 1607, *et seq.*
30. **Recruitment of Volunteers.** The *Society* will recruit, train and deploy volunteers to assist in the operations of, and fund raising on behalf of, the *DIA*.
31. **Purchase of Utilities Other than Electricity, Water and Sewage Services and Regular Trash Collection Services.** Except as provided in Subsection F32, *infra*, the *Society* may purchase utility services, including steam, telephone services and trash collection (other than regular trash collection), as well as other support services, goods and commodities, from any provider, based on quality and cost of service and such other factors as the *Society* may deem relevant and in accordance with the procurement procedures established by the *Society*.
32. **Purchase of Electricity, Water and Sewage Services and Regular Trash Collection Services.** The *Society* shall purchase electricity from the *City's* Department of Public Lighting so long as those services are offered at rates and with services that are competitive with market rates and services. The *Society* shall purchase water and sewage services from the *City's* Department of Water & Sewerage and regular trash collection services from the *City's* Department of Public Works at prices and on the general terms and conditions offered by such *City* Departments to their other customers. To the extent that the *City* does not offer certain trash collection services, including collection of construction debris, the *Society* shall be entitled to obtain such trash collection services from any provider, based on quality and cost of service and such other factors as the *Society* may deem relevant and in accordance with the procurement procedures established by the *Society*.
33. **Use of the DIA Building and Parking Lots for City-Sponsored Functions.** The *Society* shall make the *DIA building*, the *Frederick lot* and the *employee parking lot* available for *City*-sponsored functions in accordance with *DIA* policies. Prior to modifying the *DIA*'s policy concerning the availability of the *DIA building*, the *Frederick lot* and the *employee parking lot* for *City*-sponsored functions, the *Society* shall submit any proposed modification to the *Commission* for its approval of same.

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34. **Continuation and Possible Future Expansion of the DIA's Hours.** The *Society* shall not reduce the hours that the *DIA building* is open to the public unless (a) adequate funding to maintain those hours is unavailable and (b) the *Commission* approves any such change prior to reduction of the hours.
35. **General Admission to the DIA Building.** Other than for special exhibits or events, the *Society* shall not impose on visitors to the *DIA building* a mandatory general admission fee in excess of the current minimum requirement of One Cent (\$.01) per admission without the prior approval of the *Commission* and the *City Council*. The *Society* may continue to request voluntary contributions from visitors to the *DIA building*, as is the practice at the *DIA building* on the *effective date*.
36. **Policy Amendments Require Commission Approval.** The *Society* shall not establish or amend the following policies without the prior authorization of the *Commission*, except as provided in Subsection F2, *supra*, or I4, *infra*:
 - (a) the *DIA's* Guidelines for Professional Practices, to which reference is made in Subsection B3, *supra*;
 - (b) the *DIA's* Collections Management Policy, to which reference is made in Subsection F2 *supra*;
 - (c) the disaster recovery plan, to which reference is made in Subsection F13, *supra*;
 - (d) the risk management programs, to which reference is made in Subsection F14, *supra*;
 - (e) the *residency guidelines*, to which reference is made in Subsection F25, *supra*;
 - (f) the *DIA's* policy concerning the availability of the *DIA building*, the *Frederick lot* and the *employee parking lot* for *City-sponsored functions*, to which reference is made in Subsection F33, *supra*; and
 - (g) the document retention policy, to which reference is made in Subsection F44, *infra*.
37. **Society's Duty to Submit Quarterly Reports on Employment Matters.** Within sixty (60) days of the expiration of each quarter ending each September 30, December 31, March 31 and June 30 during the *contract term*, the *Society*

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shall submit to the *Commission* a written report in a form prescribed by the *Commission* covering the following:

- (a) a listing and description of (1) all pending employment-related and labor-related *claims* and (2) the resolution thereof; and
- (b) personnel matters, including the following:
 - (1) information reflecting compliance with the residency requirement of Subsection F25, *supra*;
 - (2) affirmative action and Equal Employment Opportunity data, as required by the regulations promulgated, and amended from time to time, by the Equal Employment Opportunity Commission of the Department of Labor and codified at 29 C.F.R. § 1602.1, *et seq.*;
 - (3) statistical data reflecting workforce composition and statistical data broken down by demographics for personnel transactions, including applications, hiring, performance evaluations, compensation changes, promotions, demotions, suspensions and discharges;
 - (4) the training and career development programs offered by the *Society*, including undergraduate, graduate, co-operative, internship, and progressive training programs required by Subsection F26, *supra*, and the number of participants in and outcome of any such training efforts; and
 - (5) the *Society's* efforts to recruit, train, promote and retain minorities and women in its workforce.

38. **Society's Duty to Submit Internal Quarterly Financial Statements.** The *Society* shall furnish to the *Commission* copies of any quarterly financial statements that the *Society* prepares in the ordinary course of business and submits to its own board of directors and/or officers. The *Society* shall provide all such documents to the *Commission* promptly after their distribution to the *Society's* directors. Upon receipt of such documents, the *Commission* shall provide copies thereof to the *City's* Auditor General.

39. **Society's Duty to Submit Annual Reports.** Within ninety (90) days of the expiration of each year ending June 30 during the *contract term*, the *Society* shall submit to the *Commission* a written report on the *Society's* compliance with the terms of this *agreement*. The report shall include appropriate

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comparative schedules to analyze data with budgeted and/or prior years' figures. The form of the report shall be prescribed by the *Commission*. The report shall cover the following subject matters:

- (a) acquisitions and dispositions of works of art, presentation of exhibitions and presentation of educational programs;
- (b) itemized revenues and expenses;
- (c) fundraising activities;
- (d) balances of the *Society's* endowment funds established on behalf of or for the benefit of the *DIA*;
- (e) a listing and description of (1) all pending *claims* (other than employment-related *claims* covered by Subsection F37, *supra*) and (2) the resolution thereof;
- (f) an annual compilation of the data required by Subsection F37, *supra*;
- (g) the number of visitors to the *DIA* and public served by other *DIA* programs during the reporting period;
- (h) the schedule of hours of operation of the *DIA* during the reporting period and the average number of hours per week that the *DIA* was open to the public during the reporting period;
- (i) the condition of the *DIA building*, the *Frederick lot* and the *employee parking lot*, including any major repairs or renovations made thereto, and for the purposes of this Subsection F39(i), "major" means repairs and renovations other than those necessitated by normal wear and tear;
- (j) the condition of the *City art collection*, including any major repairs or renovations made to any work of art, and for the purposes of this Subsection F39(j), "major" means repairs and renovations other than those necessitated by normal wear and tear;
- (k) any changes in existing insurance coverages from the prior year, together with a report on the application of any insurance proceeds received by the *Society* in connection with this *agreement*, the *City art collection* or the *DIA building* during such year;

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- (l) the adoption of and any material alteration to employee compensation or benefit plans for employees of the *Society* (other than any such alteration required by applicable law); and
- (m) compliance with Executive Order Nos. 4 and 22.

The *Commission* shall provide a copy of such report to the *City Council* and the *City's Auditor General*.

40. **Society's Duty to Submit Audited Financial Statements.** For the fiscal year ending June 30th of each year, and within ninety days (90) after that date, the *Society* shall deliver to the *Commission* the *Society's* annual financial statements, audited by an independent certified public accountant. Upon receipt of such statements, the *Commission* shall provide copies thereof to the *City's Auditor General*.
41. **Correction of Society's Reports.** The *Society* shall use its best efforts to correct any deficiencies noted in any report submitted to, or otherwise discovered by, the *Commission*.
42. **Society's Duty to Provide Other Information Requested by the Commission.** From time to time, the *Society* shall provide the *Commission* with such other information as the *Commission* may reasonably request.
43. **Society's Duty to Notify the Commission Concerning Emergent Matters.** The *Society* shall notify the *Commission* as soon as practicable concerning the destruction or loss of any part of the *DIA building*, the *Frederick lot* or the *employee parking lot* or of any work of art in the *City art collection*, where the reported damage, destruction or loss is estimated to exceed Fifty Thousand Dollars (\$50,000).
44. **Society's Duty to Establish Document Retention Policy.** The *Society* shall establish a written document retention policy governing retention, maintenance and destruction of *DIA records*. The *Society* shall submit its document retention policy to the *Commission* for the *Commission's* approval.
45. **Society's Duty to Submit to Audit.** The *Society* shall submit to the audits by the *Commission* or its designees, as specified in Subsection G5, *infra*.
46. **Society's Duty to Submit to Inspection.** The *Society* shall submit to the inspections by the *Commission* or its designees, as specified in Subsection G6, *infra*.